

Type of Decision									
Meeting Date	Friday, Oct. 21, 2011				Report Date	Monday, October 17, 2011			
Decision Required	X	Yes		No	Priority	x	High		Low
Direction	x	Information Only			Type of Meeting		Open	X	Closed
REPORT TITLE									
Closed Meeting – Harassment Options Report 21/10/11/1102									

CONFIDENTIAL – THE FOLLOWING INFORMATION IS TO BE CONSIDERED AT A CLOSED MEETING OF COUNCIL UNDER THE RULES THAT PROTECT IDENTIFIABLE INDIVIDUALS AND LITIGATION OR POTENTIAL LITIGATION AND THEREFORE IS CONFIDENTIAL AND NOT TO BE REPEATED TO OR SHARED WITH ANYONE!

All documents are to be returned to the Clerk prior to leaving this closed session.

Disclaimer: Obviously there is the potential for a conflict here. I have performed the duties of my employment in as objective a way as possible creating the report as I would had the incidents happened to and the allegations against Council, the Chair and McKechnie been made by someone else. I have incorporated recommendations received by Councillors Foote, Gibson and Aiston in this report. I have relied on municipal documents, legislation and precedent and have noted the sources of all information. I have attempted to remove personal opinion from the report to the best of my ability. My personal comments are included on a separate document for your consideration.

Subject: Possible actions of Council concerning Harassment complaints. Background information on defamation and character assassination.

RECOMMENDATION: Council currently has a Policy on Harassment and Workplace Violence which Council as an employer is bound to comply with. This report is in response to the incidents which occurred at the council meeting of Friday, October 7, 2011.

1. **WHEREAS** the Clerk has filed a Harassment Complaint according to the Municipal Policy on Harassment and Workplace Violence against Council, as employer, as it sat at the Council meeting of Friday, October 7, 2011;

AND WHEREAS this Council has found that Council, as employer, as it sat on Friday, October 7, 2011 is guilty of failing “to providing and maintaining a working environment that is based on respect for the dignity and rights of everyone in the Municipality” and providing “a healthy and safe work environment that is free of any form of harassment or violence.”

AND WHEREAS Council, as employer, failed to prevent an attack on the professional conduct of the Clerk and allowed Mr. McKechnie to continue in his defamation of the Clerk in front of members of the public and representatives of the local media without publicly correcting him upon his conclusion;

AND WHEREAS this failure to keep Mr. McKechnie`s comments on topic resulted in less than favourable statements being printed in the North Renfrew Times further sullyng the professional reputation of the Clerk;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby resolve to offer the following by way of amendment and remedy that:

- a. Council cause to be publicized in the North Renfrew Times and signed by the Reeve a written apology to the Clerk at the least admitting to failing to provide a working environment that is based on the respect for the dignity and right of everyone in the Municipality and failing to provide a healthy and safe work environment that is free of any form of harassment through its inaction at the meeting of Friday, October 7, 2011;
- b. Further that this letter re-affirms Council’s confidence in the Clerk’s abilities and dismissing the defamatory statements of McKechnie as false and unfounded.
- c. Because Council did not take any steps to stop Mr. McKechnie nor correct his untruths upon the conclusion of his diatribe and due to the fact that Council, as employer, allowed a verbal attack on the professional conduct and reputation of the Clerk to continue that Council authorize the Municipal Solicitor to commence legal proceedings against Mr. McKechnie on behalf of Melinda Reith, Municipal Clerk, if it is in the opinion of the Municipal Solicitor that such action is warranted; and

d. (Other)

2. WHEREAS the Clerk has filed a Harassment Complaint according to the Municipal Policy on Harassment and Workplace Violence against Reeve Stewart as Chair of the meeting of Friday, October 7, 2011;

AND WHEREAS this Council has found that Reeve Stewart as Chair is guilty of contributing to the harassment and defamation conducted by Mr. McKechnie by failing to perform the duties of the chair of a meeting as per the Municipal Procedure By-Law and common rules of meeting procedure;

AND WHEREAS Reeve Stewart as Chair failed “to providing and maintaining a working environment that is based on respect for the dignity and rights of everyone in the Municipality” and providing “a healthy and safe work environment that is free of any form of harassment or violence” by preventing Mr. McKechnie from continuing his deputation when it became personal.

AND WHEREAS Reeve Stewart as Head of Council failed to “preside over council meetings so that its business can be carried out efficiently and effectively; and to provide leadership to the council;”

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby resolve to offer the following by way of amendment and remedy:

- a. _____

_____;

3. WHEREAS the Clerk has filed a Harassment Complaint according to the Municipal Policy on Harassment and Workplace Violence against Clayton McKechnie;

AND WHEREAS this Council has found that Clayton McKechnie is guilty of workplace harassment and bullying as per the Municipal policy.

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby resolve to offer the following by way of amendment and remedy that:

- a. Council causes a letter to be forwarded to Mr. McKechnie and signed by the Reeve explaining that: although Council welcomes deputations it must not and will not in the future accept aggressive behaviour or verbal abuse directed towards any member of Council or any staff member.
- b. That any future deputation must follow the content of the document provided to Council 5 days prior to the deputation and not contain new information or accusations; and
- c. requesting a public apology be forwarded from Mr. McKechnie to the Clerk;

- d. Mr. McKechnie be prevented from participating in further deputations to Council unless he agrees to remain on topic and adhere to the decorum required in public meetings;
- e. In the future Mr. McKechnie uses the proper process available to him and any other individual to make a complaint against any member of Council or municipal employee through the Municipal Code of Conduct policy and complaint form.
- f. (Other)

BACKGROUND/EXECUTIVE SUMMARY:

1. Are the claims in the Harassment complaint forms valid?

Council needs to decide whether or not harassment or infractions as outlined in the Municipal Policy on Harassment and Workplace Violence occurred. Council needs to decide whether each named individual is at fault and in fact is guilty of harassment. If Council cannot come to a decision the complaint is to be forwarded to the Municipal Solicitor for resolution.

From the Policy "*Workplace Harassment*" and *Bullying Workplace harassment is a health and safety issue that is covered under the Ontario Occupational Health and Safety Act.*

The Occupational Health and Safety Act defines "workplace harassment" as: "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome"

Workplace harassment may have some or all of the following components:

- *it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect;*
- *it is hostile, abusive or inappropriate;*
- *it affects the person's dignity or psychological integrity;*
- *it results in a poisoned work environment.*

In addition, behaviour that intimidates, isolates or discriminates against the recipient may also be included.

Some examples of workplace harassment include:

- *verbally abusive behaviour, such as yelling, insults, ridicule and name calling, including remarks, jokes or innuendoes that demean, ridicule, intimidate or offend;*
- *workplace pranks, vandalism, bullying and hazing;*
- *gossiping or spreading malicious rumours;*
- *excluding or ignoring someone, including persistent exclusion of a particular person from workplace-related social gatherings;*

- *undermining someone else's efforts by setting impossible goals with short deadlines and deliberately withholding information that would enable a person to do his or her job;*
- *providing only demeaning or trivial tasks in place of normal job duties;*
- *humiliating someone;*
- *sabotaging someone else's work;*
- *displaying or circulating offensive pictures or materials;*
- *offensive or intimidating phone calls or e-mails;*
- *impeding an individual's efforts at promotions or transfers for reasons that are not legitimate;*
- *making false allegations about someone in memos or other work-related documents.*

What isn't harassment?

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:

- *measures to correct performance deficiencies, such as placing someone on a performance improvement plan;*
- *imposing discipline for workplace infractions;*
- *requesting medical documents in support of an absence from work.*

It also does not include normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

The test of harassment

It does not matter whether you intended to offend someone. The test of harassment is whether you knew or should have known that the comments or conduct were unwelcome to the other person. For example, someone may make it clear through his or her conduct or body language that the behaviour is unwelcome, in which case you must immediately stop that behaviour.

Although it is commonly the case, the harasser does not necessarily have to have power or authority over the victim. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor."

a. Council, as employer;

From the Municipal Policy

"Purpose: THE MUNICIPALITY OF THE CORPORATION OF UNITED TOWNSHIPS OF HEAD, CLARA & MARIA is committed to providing and maintaining a working environment that is based on respect for the dignity and rights of everyone in the Municipality. It is THE MUNICIPALITY OF THE UNITED TOWNSHIPS OF HEAD, CLARA & MARIA's goal to provide a healthy and safe work environment that is free of any form of harassment or violence.

The Corporation of the United Townships of Head, Clara & Maria is committed to fostering an environment that is free from any of the forms of discrimination and harassment which are prohibited under the Ontario Human Rights Code. Discrimination, harassment and/or violence are unacceptable within the Municipal organization in any form and at any level."

AND

"This policy also applies to situations in which you are harassed or subjected to violence in the workplace from individuals who are not employees of the Municipality, such as Council Members, volunteers, members of the public, customers and suppliers, although the available remedies may be constrained by the particular situation."

AND

"It is our mutual responsibility to ensure that we create and maintain a harassment-free, discrimination-free and violence-free workplace, and address violence and/or the threat of violence from all possible sources (including customers, clients, employers, supervisors, Council members, volunteers, workers, members of the public, strangers and domestic/intimate partners)."

AND

"Everyone governed by this policy is responsible for ensuring that all Municipal operations are free from discrimination, harassment and/or violence.

Council and senior staff have specific responsibilities to create and maintain a Workplace that is free from violence, discrimination or harassment."

AND

"If you believe that someone who is not a member of our organization, e.g., a member of Council, volunteer, member of the public, customer, contractor, supplier, etc., has harassed or discriminated against you, please report the harassment to the Clerk. Although THE MUNICIPALITY OF THE UNITED TOWNSHIPS OF HEAD, CLARA & MARIA has limited control over third parties, we will do our best to address the issue and prevent further problems from arising."

b. Reeve Stewart, as Chair;

From the Procedure By-Law

At section 7 – ***“THE CONDUCT OF PROCEEDINGS AT A COUNCIL MEETING***

It shall be the duty of the Head of Council or other Presiding Officer;

- *to attempt to bring under control the members, within the rules of order, when engaged in debate;*
- *to enforce or have enforced on all occasions the observance of order and decorum among the members;*
- *to advise any member that they are persisting in breach of the rules of order of Council, and may be ordered to vacate the Council Chambers;"*

And at Section 25 - ***“RULES OF DEBATE***

- *Permission to speak and hence to debate, is required from the Presiding Officer.*
- *Debate must be germane to the issue or subject under debate, must be courteous and respectful, and no one may impugn the motives of another.*
- *When a member is speaking, no other member shall interrupt him except on a point of order, and during such time, no other member shall speak to any other member or make any noise or disturbance.*
- *The Presiding Officer or a member may interrupt a speaker on a point of order if the member believes the speaker is violating a rule of debate."*

Although a deputation is not technically debate, if the rule that the speaker is not to be interrupted holds true so should the other requirements.

As per the Municipal Act – ***“Role of head of council***

225. *It is the role of the head of council,*

(a) to act as chief executive officer of the municipality;

(b) to preside over council meetings so that its business can be carried out efficiently and effectively;
(c) to provide leadership to the council;”

c. Clayton McKechnie;

From the Municipal policy

“This policy also applies to situations in which you are harassed or subjected to violence in the workplace from individuals who are not employees of the Municipality, such as Council Members, volunteers, members of the public, customers and suppliers, although the available remedies may be constrained by the particular situation.”

See definitions and examples following for legal precedent and explanations.

2. Remedy and corrective actions;

If Council decides that harassment did indeed take place in each case it then needs to decide how the actions or inaction of each entity is to be addressed.

- a. Council,
 - i. At a minimum, corrective actions as outlined in the policy as stated below.
- b. Reeve Stewart as Chair
 - i. Corrective actions as outlined in the policy as stated below.
 - ii. Somehow ensure that the Chair understands her rights and obligations as chair and representative of the employer to ensure that a similar incident does not ever happen again.
- c. Clayton McKechnie.
 - i. As Mr. McKechnie is not an employee or member of Council there is little that Council can do in the way of corrective action aside from preventing him from having a venue for any future such performances. Anyone making a deputation is to provide their contents to Council prior to the meeting. If any person strays from the content of their deputation they should immediately be quieted by the chair.
 - ii. Council could forward a letter to Council demanding a public apology from Mr. McKechnie and advising him that a repeat performance will not be tolerated. If he proceeds in a similar vein, his right to address Council in this manner will be removed.

From the Municipal Policy

“Corrective action: If a finding of harassment is made, THE MUNICIPALITY OF CORPORATION OF THE UNITED TOWNSHIPS OF HEAD, CLARA & MARIA will take appropriate corrective measures, regardless of the respondent’s seniority or position in the organization.

In addition to those disciplinary actions outlined in P&G 142/ADMIN/Discipline and Dismissal Policy, corrective measures may include one or more of the following:

- *discipline, such as a verbal warning, written warning or suspension without pay;*
- *termination with or without cause;*
- *referral for counselling (sensitivity training), anger management training, supervisory skills training or attendance at educational programs on workplace respect ;*
- *a demotion or denial of a promotion;*

- *reassignment or transfer;*
- *financial penalties, such as the denial of a bonus or performance-related salary increase;*
- *any other disciplinary action deemed appropriate under the circumstances.”*

Financial Implications/Budget Impact: Considerable if these complaints are to go to the municipal solicitor for resolution.

Policy Impact: Follows policy.

Others Consulted: Councillors Ed Aiston, Jim Gibson, and Dave Foote;

Supporting Case Law

- MacRae v. Santa, 2006 CanLII 32920 (ON SC)
- Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 SCR 640
- Morris v. Johnson, 2011 ONSC 3996 (CanLII)
- Hyprescon Inc. v. Ipex Inc., 2007 CanLII 11316 (ON SC)
- Halton Hills (Town) v. Kerouac, 2006 CanLII 12970 (ON SC)
- De Haas v. Mooney, 2003 CanLII 5254 (ON SC)
- Alleslev-Krofchak v. Valcom Limited, 2009 CanLII 30446 (ON SC)
- Hodgson v. Canadian Newspapers Co., 1998 CanLII 14820 (ON SC)
- Sarachman v. Whitehead, 2011 ONSC 2946 (CanLII)
- Watson v. Southam Inc., 2000 CanLII 5758 (ON CA)
- Townhouses of Hogg's Hollow Inc. v. Jenkins, 2007 CanLII 6250
- Metz v. Tremblay-Hall, 2006 CanLII 34443 (ON SC)

Websites researched

- <http://auroracitizen.files.wordpress.com/2011/01/factum-ab.pdf>
- http://www.thomsonrogers.com/sites/default/files/docs/library/Reputation_Management.pdf
- <http://www.loopstranixon.com/articles/when-can-a-councillor-break-the-ninth-commandment/>
- <http://www.loopstranixon.com/articles/defending-elected-officials-and-municipal-employees/>
- http://www.libelandprivacy.com/cyberlibel_home.html

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

Melinda Reith